

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

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|------------------------|---|--------------------------------|
| Robert William Wazney, |) | Case No.: 6:20-cv-03366-JD-KFM |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | |
| |) | OPINION & ORDER |
| Ken Nelson et al, |) | |
| |) | |
| Defendant. |) | |
| |) | |

This matter is before the Court with the Report and Recommendation of United States Magistrate Kevin F. McDonald (“Report and Recommendation”), made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02(B)(2) of the District of South Carolina.¹ Robert William Wazney (“Wazney” or “Plaintiff”), a state prisoner proceeding *pro se* and *in forma pauperis*, brought this action pursuant to 42 U.S.C. § 1983, alleging violations of his constitutional rights for failure to provide him with adequate medical care. (DE 1.)

Plaintiff’s complaint was entered on the docket on September 23, 2020. (DE 1.) On January 7, 2021, the Court issued an Order informing Plaintiff that his complaint was subject to dismissal as drafted and provided him with time to file an amended complaint to correct the deficiencies noted in the Order. (DE 19.) The Plaintiff was informed that if he failed to file an amended complaint or cure the deficiencies outlined in the Order, the Magistrate would recommend that his claims be dismissed. Instead of filing an amended complaint, Plaintiff

¹ The recommendation has no presumptive weight, and the responsibility for making a final determination remains with the United States District Court. See Mathews v. Weber, 423 U.S. 261, 270-71 (1976). The court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

appealed the Court's order to the Fourth Circuit Court of Appeals. (DE 25.) The appeal was dismissed by the Fourth Circuit. (DE 35.) On October 27, 2021, Plaintiff was provided an additional opportunity to file an amended complaint to cure the deficiencies outlined in the Court's January 7, 2021, Order. (DE 36.) On two occasions, Plaintiff filed Motions for Extension of Time to file an amended complaint (DE 40, 43), and both motions were granted, in part. (DE, 41, 44.) On December 27, 2021, two weeks after the Plaintiff's second extension expired, Plaintiff requested an additional 30 days to provide an amended complaint. (DE 46.) The Court denied Plaintiff's motion, as he had almost an entire year to provide an amended complaint, and more than 45 days since the entry of the mandate from the Fourth Circuit Court of Appeals, to provide an amended complaint. (DE 48.) Despite the additional time provided by this Court, Plaintiff has failed to file an amended complaint.

The Report and Recommendation was issued on December 29, 2022, recommending that this action be dismissed for failure to timely file an amended complaint and for failure to comply with a Court Order. (DE 49.)

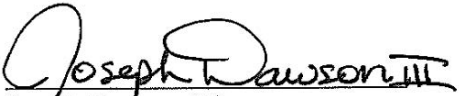
Plaintiff filed no objections to the Report and Recommendation.² In the absence of objections to the Report and Recommendation, this Court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983). The Court must "only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

² Plaintiff filed twenty-one pages of documents with the first page stating in handwriting, "I CAN'T READ THIS." However, the additional pages appear to be the Court's previous Orders and Report and Recommendation without any further commentary. (DE 51.)

Upon review of the Report and Recommendation and the record in this case, the Court adopts the Report and Recommendation and incorporates it herein by reference.

It is, therefore, **ORDERED** that this action is summarily dismissed with prejudice and without issuance of service of process and this action is designated as a “strike” pursuant to 28 U.S.C. § 1915(g).

IT IS SO ORDERED.


Joseph Dawson, III
United States District Judge

April 1, 2022
Greenville, South Carolina

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified that they have the right to appeal this order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.